IN RE LITYAN HOLDINGS BHD & ORS (APPLICANTS)

HIGH COURT MALAYA, KUALA LUMPUR
KANG HWEE GEE J
[ORIGINATING SUMMONS NO: D8-24-14-2007]
15 FEBRUARY 2007

COMPANY LAW: *Arrangement, scheme of - Application for restraining order - Whether order could be made based on facts stated in supporting affidavits of applicants - Whether there was due compliance with requirement of s. 176(10) Companies Act 1965 - Whether viability of proposed restructuring from recognised experts required*

The plaintiffs applied for a restraining order under s. 176(10) of the Companies Act 1965 to restrain proceedings against them pending a proposed scheme to be worked out so as to save them from financial collapse. The plaintiffs had been earlier granted a restraining order in respect of a previous scheme but that failed to materialise because the security commission had rejected it.

Held:

(1) A restraining order could not be made under s. 176(10) of the Companies Act 1965 based merely on facts stated in the supporting affidavit of the plaintiffs. The granting of a restraining order is a serious matter that involves the interest of shareholders and creditors of the company. Firstly, before a restraining order can be granted under s. 176(10) there must be in place a proposed "compromise or arrangement between the plaintiff and its creditors, or any class of them or between the company and its members or any class of them". Secondly, the company must be able to present a viable proposal for the consideration of the court supported by views of experts. (paras 4, 5, 6 & 7)

[Application postponed. Plaintiffs to show due compliance with requirement of s. 176(10) Companies Act 1965. Report on viability of proposed restructuring from recognised experts required.]

Legislation referred to:
Companies Act 1965, s. 176(10)

For the plaintiff - Karen Wilfred (Siti Noorhazerah with him); M/s Mazlan & Assoc

Reported by Usha Thiagarajah

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JUDGMENT

Kang Hwee Gee J:

This is my oral judgment: ***(ex-tempore)***

B **[1]** This is an application by the plaintiffs for a restraining order under s. 176(10) of the Companies Act 1965 to restrain proceedings against the plaintiffs pending the working out of the details of a proposed scheme to save the plaintiffs from financial collapse in view of the large debt they now encounter.

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[2] The plaintiffs had previously been granted a restraining order in respect of a previous scheme by the court between the period 15 September 2005 until 9 January 2007 (one year four months) but the proposed scheme had failed to materialise by reason that
D the security commission had rejected it.

[3] The present application for the restraining order emanates from a different scheme which the plaintiffs have in mind. This is disclosed in the supporting affidavit of Mr. Lim Teik Ee, the executive director of the 1st plaintiff holding company which
E essentially discloses as follows:

1. The company is currently facing financial difficulties bordering on collapse suffering a total of RM260,052,497.48 in respect of the 1st plaintiff company and its subsidiaries (the other 20
F plaintiffs).

2. There is now a need to inject fresh capital into the company by a body called GABEM (Gagasan Badan Ekonomi Melayu) by way of giving government contracts to the company and in
G the process would involve a change in its capital structure.

3. The scheme would enable the company the opportunity to secure contract.

Findings And Decision

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[4] I am unable to make a restraining order under s. 176(10) of the Companies Act 1965 based merely on facts stated in the supporting affidavit of the plaintiffs.

I **[5]** The granting of a restraining order is a serious matter which involves the interest of shareholders and creditors of the company.

[6] First, before a restraining order can be granted under s. 176(10) there must have been in place a proposed "compromise or arrangement between the plaintiff and its creditors, or any class of them or between the company and its members or any class of them".

[7] Second, the company must be able to present a viable proposal for the consideration of this court to be supported by the views of the experts.

[8] I would however allow the plaintifs the opportunity to show due compliance with the requirement of s. 176(10) and to demonsrate the viability of this application by submitting any further evidence with respect to the restructuring of the company to rescue it from financial collapse.

[9] A report on the viability of the proposed restructuring from recognised experts should be required. I would therefore postpone this application to a date when the plaintiffs are ready with liberty to apply.